UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/641,021	08/17/2000	Alan B. Cayton	59428-P001US-10020580	4559

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EXAMINER
OUELLETTE, JONATHAN P

ART UNIT	PAPER NUMBER
3629	

DATE MAILED: 07/28/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

	Application No.	Applicant(s)
Office Action Summary	09/641,021	CAYTON ET AL.
	Examiner	Art Unit	
	Jonathan Ouellette	3629	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *19 April 2004*.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-87* is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-87* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☐ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

U.S. Patent and Trademark Office

PTOL-326 (Rev. 1-04)   Office Action Summary   Part of Paper No./Mail Date 20040726

DETAILED ACTION

Response to Amendment

1. Claims 78-87 were added by applicant's amendment on 4/19/2004; therefore,

Claims 1-87 are pending in application 09/641,021.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as
> set forth in section 102 of this title, if the differences between the subject matter sought to be
> patented and the prior art are such that the subject matter as a whole would have been obvious
> at the time the invention was made to a person having ordinary skill in the art to which said
> subject matter pertains. Patentability shall not be negatived by the manner in which the
> invention was made.

3. **Claims 1-3, 5-20, 28-43, 46, 48-70, 78-79, 81, 83, and 85-87 are rejected under

35 U.S.C. 103(a) as being unpatentable over Dewar (US 2002/0055866 A1).**

4. **As per independent Claim 1**, Dewar discloses a method (system, computer

executable program code, or business method) for qualifying candidates for

employment with an employer, said method (system, computer executable

program code, or business method) comprising: executing a computer program,

said computer program receiving as input from said employer a desired hiring

criteria of said employer (60/211,044 - Fig.4); based on said desired hiring criteria

of said employer, said computer program generating at least one customized

application program that is executable to interact with candidates for employment

with said employer and determine whether each of said candidates is qualified for

employment with said employer (60/211,044 - Figs.2-3); allowing said candidates

access to the at least one generated customized application program; and

responsive to input from each of said candidates to the at least one generated

customized application program, (60/211,044 - Figs.2-4).

5. Dewar fails to expressly disclose wherein said at least one generated customized

   application program automatically determines whether each of said candidates

   qualifies for a position of employment with the employer.

6. However, Dewar does disclose a system that evaluates job candidates through an

   interactive phone/internet testing procedure, and provides a summary report of

   candidate evaluation results (Fig.4).

7. Therefore, it would have been obvious to one of ordinary skill in the art at the

   time the invention was made to have included wherein said at least one generated

   customized application program automatically determines whether each of said

   candidates qualifies for a position of employment with the employer, in the

   system disclosed by Dewar, for the advantage of providing a method of screening

   employment candidates with the ability to increase system efficiency by providing

   the employer with a listing of qualified candidates.

8. **As per independent Claims 30, 54, and 62,** Dewar discloses a system (computer

   executable program code, or business method) for use in qualifying candidates for

   employment with an employer, said system (computer executable program code,

   or business method) comprising: a processor-based device; and a computer

   program executable by said processor-based device to receive as input desired

hiring criteria of said employer and generate at least one application program

(60/211,044 - Fig.4). (60/211,044 - pp.7-12, Figs.1-4)

9. Dewar fails to expressly disclose <u>wherein said desired hiring criteria specifies at</u> <u>least one attribute to be possessed by a candidate to be considered qualified for a</u> <u>position of employment (operational characteristics).</u>

10. However, Dewar does disclose wherein a system user inputs details, categories, and components for which they wish to create an ePredix solution for a specific job type (Fig.4). Dewar also discloses wherein customized questions are setup by the system user - to include candidate knockout questions (Fig.4, pg.9-12).

11. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included wherein said desired hiring criteria specifies at least one attribute to be possessed by a candidate to be considered qualified for a position of employment (operational characteristics), in the system disclosed by Dewar, for the advantage of providing a method of screening employment candidates with the ability to increase system efficiency/effectiveness by allowing the employer to pinpoint hiring needs.

12. Furthermore, Dewar fails to expressly disclose <u>wherein</u> said at least one application program <u>is</u> executable to interact with candidates and determine whether each of said candidates qualifies for <u>said</u> position of employment with said employer.

13. However, Dewar does disclose a system that evaluates job candidates through an interactive phone/internet testing procedure, and provides a summary report of candidate evaluation results (Fig.4).

14. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included wherein said at least one application program is executable to interact with candidates and determine whether each of said candidates qualifies for said position of employment with said employer, in the system disclosed by Dewar, for the advantage of providing a method of screening employment candidates with the ability to increase system efficiency by providing the employer with a listing of qualified candidates.

15. As per Claim 2, Dewar discloses wherein said desired hiring criteria includes at least one criteria selected from the group consisting of: candidate's education, candidate's work experience, candidate's possessing a particular license, candidate's language skills, and candidate's computer skills (pp.10-11). NON

16. As per Claim 34, Dewar discloses wherein said <u>at least one attribute</u> includes <u>an attribute concerning</u> one selected from the group consisting of: candidate's education, candidate's work experience, candidate's possessing a particular license, candidate's language skills, and candidate's computer skills (pp.10-11). NON

17. As per Claim 3, Dewar discloses wherein said computer program provides a predetermined list of hiring criteria for selection by said employer as said desired hiring criteria.

18. As per Claims 5 and 35, Dewar discloses wherein said computer program includes a user interface for interacting with said employer to receive as input said desired hiring criteria from said employer.

19. As per Claim 6, Dewar discloses wherein said computer program receiving said desired hiring criteria further includes: receiving said desired hiring criteria from a user interface.

20. As per Claim 7, Dewar discloses wherein said user interface is a separate program executable to communicative with said computer program.

21. As per Claims 8, 36, and 57, Dewar discloses wherein said at least one customized application program is executable to interact with a candidate to enable said candidate to self-administer a qualification session for a position of employment with said employer.

22. As per Claims 9, 37, and 58, Dewar discloses wherein said at least one customized application program enables access by one or more candidates via at least one communication platform.

23. As per Claims 10, 38, and 59, Dewar discloses wherein said at least one communication platform includes platforms selected from the group consisting of telephony-based platform, web-based platform, and other processor-based platforms.

24. As per Claims 11, 39, and 60, Dewar discloses an IVR application that enables access by one or more candidates via telephone.

25. As per Claims 12, 40, and 61, Dewar discloses wherein said at least one customized application program includes a web-based application that enables access by one or more candidates via a processor-based device via the World Wide Web.

26. As per Claims 13 and 41, Dewar discloses wherein said generating step includes:

generating a plurality of said customized application programs (Figs.2-4).

27. As per Claims 14 and 42, Dewar discloses wherein each of said plurality of

customized application programs is executable to enable interaction with

candidates via different communication platforms (pg.7-12, Internet and

Telephone).

28. As per Claim 15, Dewar discloses said computer program receiving as input from

said employer preferences of said employer as to characteristics of said at least

one customized application program.

29. As per Claim 16, Dewar discloses wherein said computer program receives as

input from said employer indication of one or more communication platforms on

which said at least one customized application program is to enable access by

candidates (pg.7-12, Internet and Telephone).

30. As per Claims 17 and 67, Dewar discloses wherein said at least one customized

application program is executable to assist in further screening of candidates

beyond determining whether based on said desired hiring criteria said candidates

qualify for a position of employment with the employer.

31. As per Claims 18 and 68, Dewar discloses wherein said at least one customized

application program is executable to schedule future testing with a candidate

determined based on said desired hiring criteria to be qualified for a position of

employment with the employer.

32. As per Claims 19 and 69, Dewar discloses wherein said at least one customized

application program is executable to administer testing of a candidate determined

based on said desired hiring criteria to be qualified for a position of employment with the employer.

33. As per Claims 20 and 70, Dewar discloses wherein said at least one customized application program is executable to schedule a future personal interview with hiring personnel of the employer and a candidate determined based on said desired hiring criteria to be qualified for a position of employment with the employer.

34. As per Claim 28, Dewar discloses the step of said at least one customized application program outputting to a candidate determined by said customized application program as not qualifying for a position of employment with the employer one or more reasons for said candidate not qualifying.

35. As per Claim 29, Dewar discloses the step of storing to a database, information about a candidate received by said at least one customized application.

36. As per Claim 31, Dewar discloses wherein said processor-based device is a device selected from the group consisting of PC, workstation, laptop computer, and PDA.

37. As per Claim 32, Dewar discloses wherein said processor-based device is a server computer.

38. As per Claim 33, Dewar discloses wherein said server computer comprises a web server.

39. As per Claim 43, Dewar discloses an input device communicatively coupled to said processor-based device to enable candidates to input supplemental materials to said processor-based device.

40. As per Claim 46, Dewar discloses wherein said at least one application program is executable to electronically communicate said supplemental materials to hiring personnel.

41. As per Claim 48, Dewar discloses a data storage device communicatively coupled to said processor-based device to enable storage of data received by said at least one application program.

42. As per Claim 49, Dewar discloses wherein said data storage device is at least one device selected from the group consisting of hard drive, floppy disk, Compact Disc (CD), Digital Versatile Disc (DVD), and other data storage devices.

43. As per Claims 50, 52, 63, and 65, Dewar discloses wherein said processor-based device is communicatively coupled to a communication network to enable access by said employer / candidates to said computer program via said communication network.

44. As per Claims 51, 53, 64, and 66, Dewar discloses wherein said communication network is a network selected from the group consisting of: PSTN, wireless communication network, a proprietary network, general purpose processor-based information network, dedicated communication lines, computer network, direct PC to PC connection, LAN, WAN, modem to modem connection, Internet, Intranet, Extranet, or any combination thereof.

45. As per Claim 55 as understood by the examiner, Dewar discloses wherein said code for presenting and code for generating are part of a common computer program.

46. As per Claim 56, Dewar discloses wherein said code for presenting and said code

for generating are each part of separate computer programs that are capable of

communicating with each other.

47. As per Claims 78, 83, 85, and 87, Dewar discloses wherein said input of employer

preferences as to characteristics of said at least on customized application

program received by said computer program includes at least one selected from

the group consisting of: input indicating whether the at least one customized

application program is to automatically schedule an interview with candidates

determined to be qualified for a position (automation of known process – to

schedule interview, Fig.3 – 17), input indicating whether the at least one

customized application program is to interact with a calendaring program to

schedule an interview with candidates determined to be qualified for a position,

input indicating one or more interviewers with whom an interview is to be

schedules for candidates determined to be qualified for a position, input indicating

whether the at least on customized application program is to request supplemental

material from candidates determined to be qualified for a position, input

indicating whether the at least one customized application program is to forward

supplemental material received from qualified candidates to one or more hiring

managers, and input indicating whether the at least one customized application

program is to schedule future testing with a candidate determined to be qualified

for a position (Fig.3).

48. As per Claim 79, Dewar discloses wherein said generated at least one customized application program operates in accordance with the input employer preferences (Fig.4).

49. As per Claims 81 and 86, Dewar discloses wherein said computer program is further executable to receive as input preferences of said employer as to operational characteristics of said at least one application program to be generated (Fig.4).

50. **Claims 80, 82, and 84 are rejected under 35 U.S.C. 103 as being unpatentable over Dewar.**

51. As per Claim 80, Dewar does not expressly show wherein said supplemental material includes at least one of the materials selected from the group consisting of: candidate resume, writing sample, questionnaire, letter of recommendation, and school transcript.

52. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The candidate qualifying system/method would be performed regardless of the supplemental material used. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack,* 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry,* 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

53. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have requested supplemental material which included at least one of the materials selected from the group consisting of:

candidate resume, writing sample, questionnaire, letter of recommendation, and school transcript, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

54. As per Claims 82 and 84, Dewar does not expressly show wherein said computer program is operable to receive a preference of said employer as to one or more communication platforms in which said at least one application program is to enable access by candidates.

55. However these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. The candidate qualifying system/method would be performed regardless of the communication platform used. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, *see In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994).

56. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have used several types of communications platforms in which said at least one application program is to enable access by candidates, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of the data does not patentably distinguish the claimed invention.

57. **Claims 4, 22-27, 44, 45, 47, and 72-77 are rejected under 35 U.S.C. 103(a) as being unpatentable over Dewar in view of McGovern et al. (US 5,978,768).**

58. As per Claim 4, Dewar fails to disclose wherein said computer program allows said employer to input additional hiring criteria not included on said predetermined list.

59. McGovern teaches wherein the employer can input specific job requirements – not included on a predetermined list (Fig.8, C9 L35-55).

60. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included wherein said computer program allows said employer to input additional hiring criteria not included on said predetermined list, as disclosed by McGovern in the system disclosed by Dewar, for the advantage of providing a method of screening employment candidates with the ability to increase customer satisfaction by allowing the employer to directly input specific job requirements.

61. As per Claims 22 and 72, Dewar fails to expressly disclose wherein said at least one customized application program is executable to forward supplemental materials to hiring personnel of the employer for a candidate determined based on said desired hiring criteria to be qualified for a position of employment with the employer.

62. McGovern teaches wherein supplemental materials (resumes) are forwarded to the hiring contact once a qualified candidate is determined (Fig.7, Figs.28-31, C15 L10-58).

63. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have included wherein said at least one customized application program is executable to forward supplemental materials

to hiring personnel of the employer for a candidate determined based on said desired hiring criteria to be qualified for a position of employment with the employer, as disclosed by McGovern in the system disclosed by Dewar, for the advantage of providing a method of screening employment candidates with the ability to increase system effectiveness and efficiency, by providing the employer with additional decision making materials from the potential candidates.

64. As per Claims 23, 44, and 73, Dewar and McGovern disclose wherein said supplemental materials include at least one of the materials selected from the group consisting of candidate resume, writing sample, questionnaire, letter of recommendation, and school transcript.

65. As per Claims 24 and 74, Dewar and McGovern disclose wherein said at least one customized application is executable to forward said supplemental materials to hiring personnel electronically.

66. As per Claims 25, 47, and 75, Dewar and McGovern disclose wherein said at least one customized application is executable to forward said supplemental materials to hiring personnel via at least one communication method selected from the group consisting of e-mail and fax.

67. As per Claims 26 and 76, Dewar and McGovern disclose the step of said at least one customized application receiving said supplemental materials from a candidate.

68. As per Claims 27, 45, and 77, Dewar and McGovern disclose wherein said at least one customized application receives said supplemental materials via at least one of the following methods: fax, e-mail, and digital imaging device.

69. <u>Claims 21 and 71</u> **are rejected under 35 U.S.C. 103(a) as being unpatentable**

over Dewar in view of Haverstock et al. (US 6,064,977).

70. As per Claims 21 and 71, Dewar fails to disclose wherein at least one customized

application program interacts with a calendaring program to schedule said future

personal interview at a time available for said hiring personnel.

71. Haverstock teaches disclose wherein at least one customized application program

interacts with a calendaring program to schedule said future personal interview at

a time available for said hiring personnel (C5 L7-65, C9 L19-44).

72. Therefore, it would have been obvious to one of ordinary skill in the art at the

time the invention was made to have included wherein at least one customized

application program interacts with a calendaring program to schedule said future

personal interview at a time available for said hiring personnel, as disclosed by

Haverstock in the system disclosed by Dewar, for the advantage of providing a

method of screening employment candidates with the ability to increase the

efficiency of the collaborating hiring process by integrating / streamlining the

interview step (Haverstock: C9 L19-44).

Response to Arguments

73. Applicant's arguments filed 4/19/2004, with respect to Claims 1-87, have been

fully considered but they are not persuasive. The rejection will remain as final

based on the sited prior art.

74. The applicant has made the argument that the prior art of Dewar fails to teach a

computer program that generates a customized application for interacting with

candidates, as per independent claims 1, 30, 54, and 62.

75. However, as suggested by the applicant, the provisional application of Dewar

(60/211,044) discloses a flow diagram (Fig.4), which explains how the invention

compiles information and generates a customized program (ePredix Solution),

which interacts with candidates for employment with said employer.

76. The applicant has made the argument that the prior art of Dewar fails to provide

any discussion of how an application that might present the autobiographical

questions to a candidate is generated.

77. However, Dewar does disclose the business process in which the questions for

candidates are created, distributed, collected, and decided upon (60/211,044 -

pp.7-12, Figs.1-4); furthermore, the technical detail for creating and supplying the

material would be covered inherently in the reference or as a matter of simple

automation of a known process.

78. Finally, the applicant makes the argument that the prior art fails to include

specific details disclosed in dependent claims 2, 16, 41, and 42.

79. However, the elements disclosed in these dependent claims (2, 16, and 42) are

only found in the nonfunctional descriptive material and are not functionally

involved in the steps recited. The candidate qualifying system/method would be

performed regardless of the hiring criteria or the communication platform used.

Thus, this descriptive material will not distinguish the claimed invention from the

prior art in terms of patentability, *see In re Gulack,* 703 F.2d 1381, 1385, 217
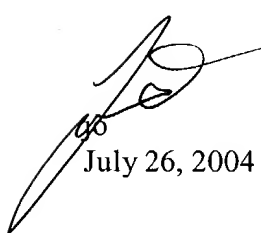
USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031
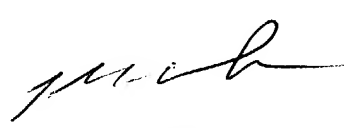
(Fed. Cir. 1994).

80. Furthermore, dependent claim 41 simple claims a repeatable process (generates a

plurality of application programs) as disclosed by Dewar (see rejection of

independent claims 1, 30, 54, and 62).

Conclusion

81. Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Jonathan Ouellette whose telephone number is

(703) 605-0662. The examiner can normally be reached on Monday through

Thursday, 8am - 5:00pm.

82. If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, John Weiss can be reached on (703) 308-2702. The fax phone

numbers for the organization where this application or proceeding is assigned are

(703) 305-7687 for regular communications and (703) 305-3597 for After Final

communications.

83. Any inquiry of a general nature or relating to the status of this application or

proceeding should be directed to the receptionist whose telephone number is

(703) 306-5484.

JOHN G. WEISS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

July 26, 2004